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**THESIS**

**ROLE OF LEGISLATURE IN THE DEMOCRATIZATION  
PROCESS IN MALAWI**

by

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December 2010

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**ROLE OF LEGISLATURE IN THE DEMOCRATIZATION PROCESS IN  
MALAWI**

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requirements for the degree of

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## **ABSTRACT**

Among the many countries that underwent the democratization process in Africa in the mid-1990s, Malawi remains in the transition process while struggling to fully consolidate. Its parliament faces challenges impacting its performance of the core functions: executive oversight, constituency service and legislation. Despite the challenges the Malawi parliament faces, it distinguished itself in 2002 when it helped to maintain constitutionality by denying the president's bid to change the constitution to allow him to stand beyond the constitutional limit of two terms. Since then, the parliament has been less effective in performing its main functions. This thesis compares the parliament's performance of its core functions in the periods 1994-2004 and 2004-2009 to explain why its performance declined over time. It finds that the struggle for control of the House undermined the parliament's ability to perform these key functions, and thereby weakened the democratization process.

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## LIST OF ACRONYMS AND ABBREVIATIONS

AFORD	Alliance for Democracy
AIDS	Acquired Immune-deficiency Syndrome
DPP	Democratic Progressive Party
EU	European Union
HIV	Human Immune-deficiency Virus
MACRA	Malawi Communications Regulatory Authority
MASAF	Malawi Social Action Fund
MBC	Malawi Broadcasting Corporation
MCDE	Malawi Center of Distance Education
MCM	Media Council of Malawi
MCP	Malawi Congress Party
MISA	Media Institute of Southern Africa
MPTC	Malawi Post and Telecommunications Corporation
NDA	National Democratic Alliance
NDI	National Democratic Institute
NEC	National Electoral Commission
PPE	Priority Poverty Expenditure
PRSP	Poverty Reduction Strategic Paper
TVM	Malawi Television
UDF	United Democratic Front

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## EXECUTIVE SUMMARY

Among the many countries that underwent the democratization process in Africa in the mid-1990s, Malawi remains in the transition process while struggling to fully consolidate. Its parliament faces challenges impacting its performance of the core functions: executive oversight, constituency service and legislation. Despite the challenges Malawi parliament faces, it distinguished itself in 2002 when it helped to maintain constitutionality by denying the president's bid to change the constitution to allow him to stand beyond the constitutional limit of two terms.

This could be attributed the fact that Muluzi's desire to stand threatened the presidential aspirations of some senior United Democratic Front (UDF) members who consequently stood against him for personal reasons, which benefited democracy. Since then, parliament has been less effective as the struggle for control of parliament affected the performance of its functions. Taking advantage of the provision as provided for in the Constitution under section 59 (1), the executive undermined parliament in face of the struggle.

Furthermore, parliamentary committees also contributed as they lacked the motivation due to poor representation, understaffing, underfunding and poor leadership quality. The challenges to the parliament's authority became more visible in the face of the power struggle.

This thesis compares parliament performance of its core functions in the period of 1994-2004 and 2004-9 to explain why its performance declined over time. It finds that the struggle for control of the House undermined parliament's ability to perform these key functions, and thereby weakened the democratization process.

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### **Disclaimer**

The views expressed in this thesis are entirely those of the author, and in no way do they represent the official position of the Malawi Defence Force or Malawi Government.

### **Dedication**

To God Almighty, your love surpasses human understanding. I dedicate this thesis to my loving mother, Eveles Banda-Kayanula, your love and guidance has being awesome. May the good God grant you long life to continue inspiring the family.

I would like to also recognize the wonderful guidance from my thesis advisor Professor Letitia Lawson, and Second Reader Professor Anshu Chatterjee. I am really indebted to you and your efforts have been exceedingly great in making this thesis happen. To Pam Silva and Janet Werner thank you for formatting and editing my thesis respectively.

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## I. INTRODUCTION

Decolonization in Africa started in 1957, and within fifteen years most African countries, that gained independence under multiparty systems devolved into military rule or one-party systems, many undergoing crippling civil wars.<sup>1</sup> The "Third Wave of Democratization," which began in Portugal in 1974, was late and slow in reaching Africa,<sup>2</sup> arriving only in the late 1980s as the Cold War was coming to an end. In some cases, the transition from authoritarian rule stalled or was aborted, while in others it was followed by an initial consolidation of democracy reflecting longer, broader, and more complex processes associated with the institutionalization and legitimization of a new set of democratic rules.<sup>3</sup> Transition and consolidation processes continue, as do recurrent crises of governance and internal conflicts,<sup>4</sup> as evidenced by disappointing results and unfulfilled expectations two decades after the onset of the transition.<sup>5</sup>

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<sup>1</sup> Stephen Brown and Paul Kaiser, "Democratizations in Africa: Attempts, hindrances and prospects," *Third World Quarterly*, Vol. 28, No. 6 (2007), 1131.

<sup>2</sup> Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, (Norman: University of Oklahoma Press, 1991), 21, 25.

<sup>3</sup> Linda J. Beck, "Senegal's 'Patrimonial Democrats': Incremental Reform and the Obstacles to the Consolidation of Democracy," *Canadian Journal of African Studies*, Vol. 31, No. 1 (1997), 1-2.

<sup>4</sup> Chris Fomunyoh, "Francophone Africa in flux: democratization in fits and starts," *Journal of Democracy*, Vol. 12, No. 3 (2001):37-50; Nicolas van de Welle, "Africa's range of regimes," *Journal of Democracy*, Vol. 13, No. 2 (2002), 66-80.

<sup>5</sup> Carlos Santiso and Augustin Loada, "Explaining the unexpected: electoral reform and democratic governance in Burkina Faso," *Journal of Modern African Studies*, Vol. 43, No. 3 (2003), 409.

In Southern Africa, South Africa and Namibia are moving along the path to democratic consolidation, while Zimbabwe and Angola remain authoritarian, and Malawi and most of the other countries are somewhere in the middle (or are caught in the initial phases of the democratic transition).<sup>6</sup> What explains this variation?

A number of factors affect the quality and quantity of the democratic progress. One school of thought highlights the role of institutional engineering. Bierschenk argues that decentralizing governmental structures has a positive effect on democratization's chances of success by opening up the political arena to new players.<sup>7</sup> Santiso and Loada argue similarly that institutional transformation and electoral reform increases the likelihood of successful democratization in unfavorable environments.<sup>8</sup> They do this by shaping the incentive structures of elites and the distribution of political outcomes to a higher level of political competition and qualitative improvement in the democratization process.<sup>9</sup>

A second group of scholars highlight the variable role of civil society in supporting democratization. Banjo asserts that social groups that are cohesive are more likely to enhance regime change than those that are divided

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<sup>6</sup> John W. Harbeson, "Electoral Systems and Democratization in Southern Africa," *The American Political Science Review*, Vol. 94, No. 1 (March 2000), 224.

<sup>7</sup> Thomas Bierschenk, "The local appropriation of democracy: an analysis of the municipal elections in Parakou, Republic of Benin," *Journal of Modern African Studies*, Vol. 44, No. 4 (2006), 543-544.

<sup>8</sup> Santiso and Loada, "Explaining the unexpected: electoral reform and democratic governance in Burkina Faso," 396.

<sup>9</sup> Ibid.

and pursuing different goals.<sup>10</sup> He argues that citizen mobilization against the regime of Matthew Kerekou contributed significantly to the creation of a new constitutional order, which in turn supported a more far-reaching democratization process than experienced by many other countries in the region.<sup>11</sup> Blair concurs with Banjo, maintaining that civil action widens participation by mobilizing marginalized groups into public life, especially the poor, women and minorities.<sup>12</sup> Furthermore, institutions of civil society protect citizens against excesses by the state acting as a buffer against possible predatory behavior and monitoring public performance on human rights abuses and corruption. In addition, civil society helps guarantee government accountability by undertaking communication, representation, and negotiation through which citizen's preferences are heard and acted upon.<sup>13</sup>

In Malawi, religious groups and civil society organizations were instrumental in forcing the ruling regime to accept democratic principles. The Roman Catholic Church, through the pastoral letter, helped in changing the attitudes of Malawians and was key in challenging and undermining Banda's authoritarian rule. During Muluzi's bid

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<sup>10</sup> Adewale Banjo, "The Politics of Succession Crisis in West Africa: The Case of Togo," *The International Journal of World Peace*, Vol. XXV, No. 2 (June 2008), 35.

<sup>11</sup> Ibid.

<sup>12</sup> Harry Blair, "Doing Democracy in the Third World: Developing An Applied Theory of Civil Society," paper for the Annual Meeting of the American Political Science Association. Washington, D.C., (2-5 September 1993), 7.

<sup>13</sup> Ibid.; Michael Bratton, "Civil Society and Political Transition in Africa," *Institute for Development Research Report*, Vol. 11, No.6 (1994), 10.

for a third term in 2002/3, the church in addition to holding prayers against the bid also organized prayer meetings against Muluzi's bid. The influence of the church proved vital in undermining Muluzi's bid for a third term.<sup>14</sup>

The mass media has also been identified as an explanatory factor in shaping the process of democratization. Carlene Edie maintains that the mass media is capable of generating a free flow of ideas on political events and issues, thereby enriching the role of public opinion in participatory politics and enabling the public to make rational choices and to hold politicians accountable for their actions, hence playing a role in democratization process.<sup>15</sup> Nwajiaku agrees with Edie and states that the revelation by the independent press on how France was dictating the transition process in Benin made things worse, as it alluded to the fact that the transition was being designed to guarantee the president's position.<sup>16</sup> Banjo asserts that, in Togo, unlike in Benin, the independent newspapers and electronic media were not allowed to operate freely, thereby preventing the masses from making informed decisions, and affecting the

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<sup>14</sup> Kenneth R. Ross, "Worrisome Trends: The Voice of the Churches in Malawi's Third Term Debate," *African Affairs*, Vol. 103, No. 410 (2004), 91-107.

<sup>15</sup> Carlene J. Edie, "Democracy in the Gambia: Past, Present and the Prospects for the Future," *African Development*, Vol. XXV, Nos. 3&4 (2000), 172.

<sup>16</sup> Kathryn Nwajiaku, "The National Conferences in Benin and Togo Revisited," *The Journal of Modern African Studies*, Vol. 32, No. 3 (Sept., 1994), 438-9.

democratization process.<sup>17</sup> This demonstrates the important role of mass media in helping the democratization process.

A third camp highlights the effect of external actors in the democratization process in Africa. By the late 1980s, almost half of the countries in sub-Saharan Africa were bankrupt and most of the other countries were being supported by Western public capital.<sup>18</sup> Richard Joseph argues that despite the fact that some African regimes strongly resisted the demands of international financial institutions to change their failed economic policies, their growing budgetary shortages forced them to capitulate. The reluctance of their bilateral partners to continue providing relief, coupled with lack of interest of private banks in the continent, necessitated their acceptance of highly conditional loans from the International Monetary Fund and World Bank that in essence eroded their popular support.<sup>19</sup>

The Marxist regime in Benin was the first to permit multiparty elections, which resulted in Soglo, a former World Bank official, ousting the incumbent. Zambia, like another early "domino" to fall, followed.<sup>20</sup> Kandeh concurs

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<sup>17</sup> Banjo, "The Politics of Succession Crisis in West Africa: The Case of Togo," 43.

<sup>18</sup> Nicolas van de Walle, "Neopatrimonialism and Democracy in Africa, with an Illustration from Cameroon," in Jennifer A. Widner, ed., *Economic Change and Political Liberalization in Sub-Saharan Africa* (Baltimore: The Johns Hopkins University Press, 1994), 135.

<sup>19</sup> Richard Joseph, "Democratization in Africa after 1989: Comparative and Theoretical Perspectives," *Comparative Politics*, Vol. 29, No. 3, Transition to Democracy: A Special Issue in Memory of Dankwart A. Rustow (April, 1997), 369.

<sup>20</sup> Jan Kees van Donge, "Kamuzu's Legacy: The Democratization of Malawi: Or Searching for the Rules of the Game in African Politics," *African Affairs*, Vol. 94, No 375 (Apr, 1995), 231.

with van Donge on the role of external actors in the success of the democratization process in Africa.<sup>21</sup> However, he looks at the role that donor aid plays in this process. He argues that the way donor funds were managed by the Sierra Leone People's Party (SLPP) had a direct impact on the elections.<sup>22</sup> Secondly, he argues that donor aid helps in the democratization process by strengthening the operational capacity of state institutions and many local non-governmental organizations. He points out that it would have been impossible for the National Electoral Commission (NEC) in Sierra Leone to conduct free and fair elections had it not been for the support of external donors.<sup>23</sup> By breathing new life into the NEC and other state institutions, Kandeh argues that capacity-building assistance from donors made it extremely difficult for the SLPP to rig the elections.<sup>24</sup>

The economic sanctions that were placed on Malawi during Banda's rule helped to create favorable conditions for multiparty politics during the 1990s. Pressure from the World Bank, International Monetary Fund and other international financial institutions forced Banda to relax

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<sup>21</sup> Jimmy D. Kandeh, "Rogue incumbents, donor assistance and Sierra Leone's second post-conflict elections of 2007," *Journal of Modern African Studies*, Vol 46, No. 4 (2006), 605.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid., 606.

his authoritarian rule and allow the opposition to participate in politics by conducting campaigns and participating in elections.<sup>25</sup>

Finally, the role of the military is considered to be an important factor in the democratization process. Collier argues that the military is often considered a threat to democratic regimes where the men in uniform choose to take power from democratically elected leaders.<sup>26</sup> On the positive side, the military can support democratization processes by ousting dictatorial regimes through coups or threats of coups, or by refusing to support incumbents who attempt to overstay their welcome in power. He argues his case by referring to the events in Senegal in 2000, when the military played an important role by forcing the incumbent to accept his defeat in the elections or face a coup.<sup>27</sup>

Just as in Senegal, Finer argues that the military in Turkey also played a significant role in the democratization process by arresting President Bayar and his ministers, who were accused of harassing and restraining the opposition.<sup>28</sup> The military ensured a return

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<sup>25</sup> Jan Kees van Donge, "Kamuzu's Legacy: The Democratization of Malawi: Or Searching for the Rules of the Game in African Politics," *African Affairs*, Vol. 94, No 375 (Apr, 1995), 231.

<sup>26</sup> Paul Collier, *Wars, Guns, and Votes: Democracy in Dangerous Places*, (New York: Harper Collins Publishers, 2009), 144.

<sup>27</sup> Ibid.

<sup>28</sup> Samuel E. Finer, *The Man on Horseback: The Role of the Military in Politics*, (New Brunswick, New Jersey: Transaction Publishers, 2002), 38.

to democracy by restoring rights and freedoms, drawing up a new constitution, and conducting free elections in October 1961.<sup>29</sup>

In Malawi, the military helped in the democratization process by dismantling Banda's paramilitary wing the Malawi Young Pioneers. In addition to the factors discussed above, the actions of the army weakened Banda's rule by removing his terror machinery, rendering him vulnerable.<sup>30</sup>

Surprisingly, the role of democratic institutions themselves in strengthening or weakening young democratic regimes, while noted, is less well studied. Edie notes that a weak judiciary is a hindrance to democratization because it is unable to protect political rights in the competitive party system by enforcing constitutional guarantees that guard against their violation.<sup>31</sup> Similarly, a strong judiciary is more able to protect individual freedoms that are granted under the law, and to limit the power that the state can exercise over the individual.<sup>32</sup> However, he does not explore the variation in judicial performance over time.

Bierschenk argues that the Constitutional Court in Benin played its role as a guardian of the Constitution,

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<sup>29</sup> Samuel E. Finer, *The Man on Horseback: The Role of the Military in Politics*, (New Brunswick, New Jersey: Transaction Publishers, 2002), 38.

<sup>30</sup> Kings M. Phiri, "A Case of Revolutionary Change in Contemporary Malawi: The Malawi Army and the Disarming of the Malawi Young Pioneers," *Journal of Peace, Conflicts and Military Studies*, Vol. 1, No. 1 (March 2000), 1-7.

<sup>31</sup> Eddie, "Democracy in the Gambia: Past, Present and the Prospects for the Future." 172.

<sup>32</sup> Ibid.

thereby contributing to the democratization process, which resulted in Benin having no political prisoners, but again, without explaining why.<sup>33</sup> Barkan makes a similar argument about legislatures: weak ones cannot effectively perform their oversight duties, while strong ones positively contribute to the democratization process by acting as an effective check and balance on the executive.<sup>34</sup> But again, these authors do not explain why legislatures sometimes perform these roles and sometimes do not.

By using a case study of Malawi, this thesis seeks to answer the question of why some countries have not yet fully consolidated their democracies. This study discusses how parliament in Malawi is performed, because it considers parliament to be key in determining the level of democratization. The discussion shows that although the legislature played a strong role in democratic transition initially, it later floundered. This thesis argues that politics of survival affected how parliament transacted business after 2000, negatively impacting its core functions. A qualitative within-case comparison method will be used to investigate this argument, comparing the period 1994-2004 to the period 2004-9. In the first period, despite facing challenges of limited meeting time and funding mainly for parliamentary committees and staffing,

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<sup>33</sup> Bierschenk, "The local appropriation of democracy: an analysis of the municipal elections in Parakou, Republic of Benin," 546.

<sup>34</sup> Joel D Barkan, "African Legislatures and the "Third Wave" of Democratization," *Preliminary Draft*, prepared for Yale/World Bank Workshop on Governance and Development in Africa and the Middle East to be held at Yale University, January 30-31, 2009 (12/30/2008), 3.

parliament was relatively effective in performing its functions, while in the later period it did virtually nothing.

The legislature is deemed an important institution at two levels for the deepening of democracy. Firstly, it passes laws, working independently or with the executive. This process calls for bargaining and compromise between rival interests, lest the legislature just provide approval for executive interests.<sup>35</sup> Secondly, it performs executive oversight, ensuring vertical accountability of rulers to the ruled and horizontal accountability of all government agencies to the legislature which represents the people.<sup>36</sup>

Parliamentary committees are critically important, as their level of expertise impacts the ability of Members of Parliament (MPs) to question and counter executive bills and exercise effective oversight.<sup>37</sup> It is precisely because legislatures are both representative bodies and instruments for horizontal and vertical accountability that an institutionalized legislature is a defining attribute of all democracies.<sup>38</sup> Those parliaments that are merely approve the executive's interests weaken the democratization process by legitimizing undemocratic tendencies of the executive, while those that exercise control over the

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<sup>35</sup> Barkan, "African Legislatures and the "Third Wave" of Democratization," 3.

<sup>36</sup> Barkan, "Legislatures on the Rise: Progress in Retreat in Africa," 125.

<sup>37</sup> Patel and Tostensen, "Parliamentary-Executive Relations," 4-5.

<sup>38</sup> Joel D. Barkan, "Legislative Development in Africa," in "Democratization in Africa: What Progress towards Institutionalization?" *Conference Report, CR 2008-01*, Ghana Center for Democratic Development, 4-6 October 2007 (February 2008), 16.

executive enhances the democratization process by acting as a check and balance. Constituency service by individual legislators, however, is also important in maintaining links between the governors and the governed, and in maintaining popular support.<sup>39</sup>

In the context of Africa, constituency service generally involves basic needs like roads, clean water, health facilities, schools and recreation facilities, among others.<sup>40</sup> These functions, however, are always in conflict with each other, and call for bargaining and compromise across the many competing interests.<sup>41</sup> Thus, the following chapters investigate the performance of the Malawi legislature in the core areas of executive oversight, constituency service and legislation.

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<sup>39</sup> Barkan, "Legislatures on the Rise: Progress in Retreat in Africa," 126.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

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## II. PARLIAMENT IN MALAWI (1994-2004)

At the dawn of independence, the parliament in Malawi was modeled after the British parliament. The Constitution provided for political pluralism and allowed people to compete in an election for political office.<sup>42</sup> In August 1964, roughly a month after independence, a major political crisis led to the consolidation of the supremacy of the ruling Malawi Congress Party (MCP) and President Hastings Kamuzu Banda, and the reduction of the authority of the parliament.<sup>43</sup> In the face of opposition to Banda's authoritarian style from his own ministers, parliament gave Banda an overwhelming vote of confidence.<sup>44</sup> In 1966 it adopted a new constitution that abolished multiparty politics and formally established a one-party state. In 1970 Banda was declared life president of the MCP and a year later, he became the life president of Malawi, a position he held until 1994, when parties reasserted themselves.<sup>45</sup>

On May 17, 1994, Malawi conducted its first multiparty elections. The presidential election, deemed free and fair by the international community, was won by Dr. Bakili

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<sup>42</sup> Clement Ng'ong'ola, "Judicial Mediation in Electoral Politics in Malawi," in Harri Englund, *A Democracy of Chameleon: POLITICS AND CULTURE IN THE NEW MALAWI*, (Blantyre, CLAIM/MABUKU, 2002), 63.

<sup>43</sup> Paliani Gomani Chinguwo, "1964 Cabinet Crisis," <http://ngomamotovibes.com/chiume/CABINETCRISIS1964.pdf>, Accessed 8/9/2010.

<sup>44</sup> Ibid.

<sup>45</sup> Nandini Patel, Richard Tambulasi, Bright Molande and Andrew Mpesi, "Consolidating Democratic Governance in Southern Africa: Malawi," *EISA Research Report*, No. 33 (2007), 5.

Muluzi head of the United Democratic Front (UDF).<sup>46</sup> In the parliamentary elections, UDF won eighty-five seats, MCP fifty-six and Alliance for Democracy (AFORD) thirty six.<sup>47</sup> Thus, no party won the two-thirds majority required by the Constitution to conduct legislative business, or even the fifty percent required to pass bills. This successful transition, and the balance of power in the legislature, brought high hopes that parliament would be independent, although everyone expected the democratization process to remain delicate.<sup>48</sup> As in all new democracies, democratic consolidation was limited by the legislature's inability to fully exercise its authority vis-à-vis the executive.

This chapter examines how the legislature performed its core functions oversight, constituency service, and legislation in the first decade of multiparty politics. It argues that despite having just emerged from thirty years of dictatorial rule, parliament played a significant role that was a dramatic departure from the politics of hero worship that characterized the single-party parliament. Furthermore, despite the challenges that the legislature faced, especially the limited meeting time and financial and personnel deficits in various parliamentary committees,

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<sup>46</sup> Peter VonDoepp, "The Survival of Malawi's enfeebled democracy." 232: Blessings Chinsinga, "Malawi's Democracy Project at a Crossroads," in *Towards the Consolidation of Malawi's Democracy*, Occasional Paper No. 11, (Lilongwe: Konrad-Adenauer-Stiftung, 2008), 7.

<sup>47</sup> Nandini Patel, Richard Tambulasi, Bright Molande and Andrew Mpesi, "Consolidating Democratic Governance in Southern Africa: Malawi," 36.

<sup>48</sup> Blessings Chinsinga, "Malawi's Democracy Project at a Crossroads," 7.

it was able to stand above party politics when it mattered most, ensuring that the democratic process was not entirely derailed.

#### **A. PARLIAMENTARY EXERCISE OF EXECUTIVE OVERSIGHT FUNCTION**

Upon moving from one-party to multiparty politics, the parliament in Malawi was given the mandate to exercise executive oversight as provided for under sections 89(3) and 96(1)(e) of the Constitution. During this period, however, the oversight function of parliament was affected by a number of factors, including the time factor.

Although section 59(2) of the Constitution mandates parliament to meet at least twice a year, this does not provide sufficient time to enable MPs and the various committees to exercise oversight. Malawi parliament has seventy-five to one hundred sitting days in a year. For oversight to be performed properly, parliamentarians need time to study policy proposals and bills and to prepare for debate. Although, parliamentary Standing Orders provide for a twenty-eight day period between tabling and debate of bills (Standing Order 116(1) Malawi Parliament 2003: 45), this has often been waived (as provided for in Standing Order 117, Malawi Parliament 2003: 46).<sup>49</sup> The period of 2000-4 witnessed more waivers (twelve) and even the complex and important budget document had not been spared. Most MPs view waivers as an infringement by the executive on legislative powers to hold the executive accountable. Legislators argue that waivers disable them from exercising

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<sup>49</sup> Nandini Patel and Arne Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," *CHR MICHELSEN INSTITUTE*, WP 2006:10, (2006), 13.

their duties as they are left with little time to do research, and to consult and solicit advice from expert, which results in brief and uniformed debates in the House. Inadequate time leads to parliament passing executive sponsored bills without much debate as less time leads to more pressure from the executive on parliament to pass sensitive and important bills.<sup>50</sup> This consequently affects the level of the democratization process since the strength of the parliament determines the quality and level of the democratization process.

In addition, staffing and underfunding also affected the oversight function. Parliamentary committees have members of various parties represented in parliament through a selection that is based on personal favoritism rather than merits, capacity or interest. The way members are selected to various committees affects the efficacy of the committees and parliament in exercising oversight. Selecting members to the committees based on their interests and merit could have enhanced the efficacy of the parliament and committees. Time for debates on motions or bills could have been shortened through thorough and solid preparatory work in the various committees, thereby cutting the time needed to discuss the same in plenary of the House.<sup>51</sup>

Parliament is also faced with the problem of funding, which affects how it conducts business and holds the executive accountable, negatively affecting the

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<sup>50</sup> Patel and Arne Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 5, 13.

<sup>51</sup> Ibid., 14.

parliamentary contribution towards democracy. Though the Clerk of parliament yearly prepares the budget, it is always cut by the Treasury. Since most MPs are accommodated in hotels during the sitting of parliament, this impact on the duration of sittings and with little time available to discuss and get expert advice, the quality of contributions during debates is equally compromised.<sup>52</sup> Additionally, the committees lack facilities and support functions as demonstrated by seventeen committees all sharing two researchers and four secretaries with poor computer services. This is further complicated by the caliber and dynamism of committee chairs with regard to their level of education, knowledge of the substance of their committee briefs and command of procedure.<sup>53</sup> These factors combined affected the ability of parliament to fully exercise its functions and contribute positively toward the democratization process.

Despite the challenges above, parliament was able to exercise its powers and hold the executive accountable as established in the Constitution. Section 89(3) requires the president to appear annually in parliament and address the House on government policies and the state of the nation. Additionally, the president is required to answer questions, which he has done on a few occasions in both periods of study.<sup>54</sup>

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<sup>52</sup> Patel and Arne Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 14.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., 12.

Furthermore, under section 96(1)(e), cabinet ministers are required to report to parliament on their respective ministries and to answer questions from the House, when called to do so. In both periods of study this happened frequently, though some ministers had been called more than others, depending on the issues at hand that parliament needed clarification on. Moreover, during this period, ministers responsible for statutory corporations or parastatals as per legal requirement did present annual reports on institutional performance to the House. Parliament as a whole was again able to exercise its authority when it shifted money from an office of president and cabinet item to education in 1994, and denied funds for a new National Intelligence Bureau as it was allegedly illegal in 2004.<sup>55</sup> Lastly, once the need arose, the select committees of parliament, using their mandates, have been able to demand and get documents from the executive for scrutiny.<sup>56</sup>

Apart from parliament as a whole, the various committees of parliament have also been active in exercising the executive oversight function. The Budget and Finance Committee is critical to effective oversight of government spending. During its formative stages (1995/6), the committee advised parliament on judicial salaries and packages that were deemed important to ensuring the independence of the judiciary. During this period, the Committee was able to engage the services of consultants to

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<sup>55</sup> Patel and Arne Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 13.

<sup>56</sup> Ibid.

advise it on inflation, budget deficit, gender equity concerns, and analysis of the national budget. Towards the end of 2001, the Budget and Finance Committee established a task force on poverty reduction as a way of devoting its energies to poverty reduction concerns.<sup>57</sup> Starting in 2002, the Budget and Finance Committee began to target specific health-care programs as priorities in the country's Poverty Reduction Strategy Paper (PRSP) and national budget. Within the same period, the committee also monitored government performance with regards to health-care programs, and lobbied the government to ensure that priority poverty expenditures (PPEs) were integrated into the larger monitoring and evaluation system of the PRSP review.<sup>58</sup> The committee also tracked allocations for PPEs from the Ministry of Finance through Ministry of Health.

In addition, the Human Immune-deficiency Virus/Acquired Immune-deficiency Syndrome (HIV/AIDS) subcommittee of parliament made recommendations to the executive in October 2003 for improving the country's response to the pandemic. The recommendation, which were adopted and incorporated in government policies on HIV/AIDS, included establishing a parliamentary standing committee on HIV/AIDS, ensuring that allocated expenditures for HIV/AIDS are protected, providing for MPs to undergo

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<sup>57</sup> "The Role of Parliament in the implementation of the PRSP," *Southern African Regional Poverty Network*, available at, <http://www.sarpn.org.za/documents/d0000078/page3.php> Accessed, 9/26/2010.

<sup>58</sup> The National Democratic Institute for International Affairs (NDI), The Southern African Development Community Parliamentary Forum (SADC PF), "Survey of the Legislative Efforts to Combat HIV/AIDS in the Southern African Development Community (SADC) Region," online available at [http://www.ndi.org/files/1795\\_sa\\_hiv\\_033105\\_0.pdf](http://www.ndi.org/files/1795_sa_hiv_033105_0.pdf). Accessed 9/26/2010.

voluntary testing, making parliament an ex-officio member of the National Aids Commission Board, and requesting that churches take a silent policy on condom issues.<sup>59</sup> The recommendations acted as guideline in enabling the committee to monitor how the executive was spending on HIV/AIDS and measures taken to curb the problem and hold government ministries and departments accountable where it was failing. This was a good development for democracy as it entailed executive oversight.

The Parliamentary Public Accounts Committee revealed irregularities in the procurement of notebooks (the Field York case) by Minister of Education Sam Mpasu in 1994, who was later removed from his position by the president.<sup>60</sup> The Field York case involving Mpasu demonstrates lack of an enforcement mechanism, as despite proving beyond doubt that he was in the wrong, parliament could not do anything apart from waiting for the executive to act because it lacked the mandate to do so.<sup>61</sup>

Another committee of parliament which did well during this period was the Public Accounts Committee. Through scrutiny of expenditures, it was able to reveal massive corruption occurring within government ministries and

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<sup>59</sup> The National Democratic Institute for International Affairs (NDI), The Southern African Development Community Parliamentary Forum (SADC PF).

<sup>60</sup> Mike Chipalasa, "FIELDYORK CASE: Mpasu jailed six years," *The Daily Times Newspaper*, (April 9, 2008).

<sup>61</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 12.

departments.<sup>62</sup> In July 2000, the committee published a report implicating ministers and top government officials in a multi-million kwacha fraud involving shoddy government contracts. In response, the president dropped those implicated in the fraud, including close allies Cassim Chilumpha, Brown Mpinganjira and Peter Chupa, from the cabinet, indicating effective parliamentary-executive oversight.<sup>63</sup>

Although parliament and the committees were able to perform the oversight function, they faced challenges ranging from lack of enforceability of their decisions, understaffing to insufficient time to meet and deliberate issues, a requirement for effective oversight. Parliament and its various committees lack the mechanism to enforce disciplinary measures once executive wrongdoing is established.<sup>64</sup>

In conclusion, although parliament faced some challenges in terms of funding and staffing, it still managed to exercise some oversight as demonstrated by the revelation of irregularities and fraud in government ministries and departments. Donors who held an interest provided most of the support for the functioning of committees. The performance of executive oversight indicated a realization among legislators that they have a role to play in the democratization process as a multiparty

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<sup>62</sup> Raphael Tenthani, "Heads Roll in Malawi Cabinet," *BBC News Online*, (November 6, 2000) available at <http://news.bbc.co.uk/2/hi/africa/978389.stm>, Accessed 9/21/2010.

<sup>63</sup> Tenthani, "Heads Roll in Malawi Cabinet."

<sup>64</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 12.

presence calls for checks and balances on the executive. Executive oversight helped to ensure accountability and improved transparency among the various government institutions.

In the case of HIV/AIDS issues, the role of parliament was essential in ensuring that those affected by the pandemic were not segregated against in society and the work-place based on their status. By improving accountability and transparency and protecting the rights of those affected by HIV/AIDS, parliament was instrumental in enhancing democratic principles, which contributed toward maintaining political and civil rights and the rule of law. This is vital in preventing a return to one party rule.

#### **B. LEGISLATORS PERFORMANCE OF CONSTITUENCY SERVICES**

Malawi legislators played an important role in improving the living conditions of their constituents in this decade. Legislators met with their constituents on a number of occasions in order to discuss ways the government could deliver better HIV/AIDS services. Parliament passed a law in 2003 requiring the Ministry of Health to give out food supplements and anti-retroviral treatments to those diagnosed with HIV/AIDS. Parliament also monitored budget allocations for anti-retroviral treatment throughout the period.<sup>65</sup> Additionally, in 2003 through an act of parliament, parliament was able to secure funds within the

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<sup>65</sup> "HIV/AIDS Program Helps Democracy Deliver in Southern Africa," *The National Democratic Institute*, available at <http://www.ndi.org/node/15158>, Accessed 9/27/2010.

national budget for HIV drugs.<sup>66</sup> As a result of the 2003 law, it is now mandatory for government ministries, departments and district and city assemblies to allocate at least two percent of their budgets to HIV activities.<sup>67</sup> Through these actions, legislators helped to improve the government's delivery of HIV/AIDS services to constituents.

Legislators have been involved in providing some basic services to their constituents. Legislators provided coffins for those who could not afford them, ferried patients to hospitals (either personally or by allowing their cars to be used for that purpose), and attended church fundraising events, weddings and engagement ceremonies.<sup>68</sup> In liaison with chiefs, MPs have mobilized constituents in developmental projects like molding bricks for the construction of schools, teachers' houses, and clinics too. Legislators also contributed to development in their constituencies, by helping to secure funding for various developmental self-help projects.<sup>69</sup>

For instance, a legislator in the north helped his constituents find funding from the Malawi Social Action Fund (MASAF) and European Union (EU) for construction of school blocks, a Malawi Center of Distance Education (MCDE)

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<sup>66</sup> "HIV/AIDS Program Helps Democracy Deliver in Southern Africa," *The National Democratic Institute*, available at <http://www.ndi.org/node/15158>, Accessed 9/27/2010.

<sup>67</sup> Malawi Government, "National HIV/AIDS Policy: A Call for Renewed Action," *Office of the President and Cabinet - National AIDS Commission*, (October 2003), 5.

<sup>68</sup> MacDonald Thom, "The Daily Times," (September 21, 2010).

<sup>69</sup> "Why Should I Work in My Constituency?" <http://www.agora-parl.org/sites/default/files/NDI%20-%20Malawi%20Constituency%20Handbook%20for%20Parliament%201.1%20-%20English%20-%20Parliamentary%20Institution.pdf>. Accessed 9/27/2010.

and a bridge. A legislator in the south helped in initiating self-help projects with funding from MASAF, the American Embassy and the EU and convinced a private farmer to pay for a piped water project for the local village. Furthermore, the legislator had a hand in encouraging students and parents to mold bricks for the expansion and repair of every primary school in his constituency. One legislator managed to secure funding for the construction of over ten primary schools in his constituency within one year.<sup>70</sup>

Legislators were also vital in promoting the welfare of their constituents through cooperation with Non Governmental Organizations (NGOs). After realizing that his constituents were drinking polluted water during the rainy season, a legislator in the south convinced World Vision International to provide funding to dig wells, which he helped to supervise.<sup>71</sup> Another legislator in the center had several boreholes repaired by tirelessly phoning the district water office and asked them when the repair work would be finished.<sup>72</sup>

In the south, a legislator drove from her constituency to Blantyre where she picked up a technician from the Ministry of Irrigation and Water Affairs, took him to a broken borehole and demanded that he fix it immediately. In another case, two legislators managed to double the number of secondary schools that were to be built in their constituencies by attending a district development

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<sup>70</sup> "Why Should I Work in My Constituency?"

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

committee meeting and putting forward the request for secondary schools in their constituencies.<sup>73</sup> Legislators had realized by this time that their political survival was dependent on how well they performed constituency service in comparison to the other functions.<sup>74</sup>

#### **C. HOW PARLIAMENT EXERCISED THE POWER OF LEGISLATION**

The UDF entered into a coalition with AFORD in 1994 to establish a working majority in the House. In the next five years, parliament passed several bills. The Constitution Amendment Act 1994 empowered the president to appoint a second vice president if he deemed it proper in the interest of the nation, and limited the first and second vice presidents to a term of five years or the end of the president's five-year term of office, whichever was sooner.<sup>75</sup> The bill was important because it limited the powers of the president over his vice or second vice president with regard to terms of office. This prevented the president from unilaterally removing his vice and second vice president without following procedure in case of conflict between them, which is good for democracy.

In 1995, two additional constitutional amendments were passed. Amendment Act 1995 required the state to provide

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<sup>73</sup> "Why Should I Work in My Constituency?".

<sup>74</sup> Blessings Chinsinga, "The Interface between Local Level Politics, Constitutionalism, and State Formation in Malawi through the Lens of the Constituency Development Fund (CDF)," available at, [http://www.yimd.org/documents/T/the\\_interface\\_between\\_local\\_levelpolitics\\_and\\_stateFormation\\_in\\_malawi\\_through\\_the\\_lens\\_of\\_the\\_constituency\\_development\\_fund.pdf](http://www.yimd.org/documents/T/the_interface_between_local_levelpolitics_and_stateFormation_in_malawi_through_the_lens_of_the_constituency_development_fund.pdf). Accessed 9/28/2010.

<sup>75</sup> Anthony Kamanga, "Amendments to the Constitution since 18<sup>th</sup> May 1994," *Presentation at the National Constitutional Review Conference at Capital Hotel, Lilongwe,*" (29 March 2006), 4.

funds to parties with more than one-tenth of the national vote in parliament and limited disqualifications of persons elected as legislators to convictions for crimes involving dishonesty or moral turpitude that occurred within seven years. Amendment (No.2) Act 1995 placed the director of public prosecution under special directions of the attorney general. It also amended section 88(3), which required the president and members of the cabinet to declare, within three months of being elected, all assets, liabilities, and business interests as well as those in the possession of their spouses or held on their behalf. A new provision introduced as section 213 gave the same requirement to members of parliament and the Senate, public officers and senior officers of statutory bodies.<sup>76</sup> This was important for ensuring that the wealth office bearers accumulate is in line with their positions and that there is no abuse of government resources.

Constitution (Amendment) Act 1998 put the term of parliament from the day of swearing to day of dissolution to a five-year term, and also limited the president's term to five years, while aligning the first vice and second vice presidents' terms to that of president.<sup>77</sup> These amendments were good for democracy because the setting of term limits meant that the tenure of the president or the parliament could not be reduced or extended beyond the

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<sup>76</sup> Kamanga, "Amendments to the Constitution since 18<sup>th</sup> May 1994," 5-10.

<sup>77</sup> Ibid., 10-12.

required period without reasonable grounds. This acted as a control measure against those in office who wanted to extend their stay without procedure.

The Communication Act, passed in November 1998, established an independent body, the Malawi Communications Regulatory Authority (MACRA), to regulate all forms of communications, removing this task from the president's office.<sup>78</sup> The Act also restructured the Malawi Posts and Telecommunications Corporation (MPTC) into separate telecommunications and postal businesses, and privatized the postal services. Furthermore, the Act resulted in the reconstitution of the Malawi Broadcasting Corporation (MBC). MACRA was given the power to regulate the airwaves and license broadcasters that met set requirements, which was important because it placed powers in the hands of an independent body which would be less influenced by political decisions than the initial office of the president.<sup>79</sup>

The Communications Act was supported by legislators from UDF, AFORD, and the opposition MCP. The creation of the office of second vice president was opposed by MCP legislators and protested by civil society, while the repeal of section 64 was protested by religious groups, civil society organizations and other human rights groups.<sup>80</sup> Nevertheless, the legislations were passed, and Chakufwa

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<sup>78</sup> "Malawi Communication Law 1998: The Malawi Communication Act," [http://www.researchictafrica.net/new/images/uploads/Malawi\\_Communications%20Act\\_1998.pdf](http://www.researchictafrica.net/new/images/uploads/Malawi_Communications%20Act_1998.pdf) /. Assessed 7/19/2010.

<sup>79</sup> "Malawi Communication Law 1998."

<sup>80</sup> Patel and Tostensen, "Parliamentary Executive Relations in Malawi 1994-2004," 7.

Chihana went on to assume the office of the second vice president. Additionally, Constitution (Amendment) Act 1999 was passed in November 1998 when it became apparent that due to logistical problems, it was not feasible to hold 1999 parliamentary and presidential elections as provided for in the Constitution. The amendment provided that the elections be held not later than June 15, 1999, as appointed by the electoral commission.<sup>81</sup> These amendments helped to create a favorable environment for democracy by ensuring that all institutions and actions taken are enacted in the Constitution.

The democratization process began to face a lot of challenges and democracy was put to the real test in the period 1999-2004. In the parliamentary elections of 1999, the UDF won ninety-three seats, MCP sixty-six, AFORD twenty-nine, and four went to independent legislators who joined the UDF after the elections.<sup>82</sup> One disputed outcome was overturned in favor of the UDF, and a by-election yielded yet another seat. Thus the UDF held ninety-nine seats to the opposition alliance's ninety-three (MCP sixty-four, AFORD twenty-nine), giving it a legislative majority, but not the required two-thirds majority needed for a quorum in order to transact business in the House and pass bills.<sup>83</sup>

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<sup>81</sup> Kamanga, "Amendments to the Constitution since 18<sup>th</sup> May 1994," 13.

<sup>82</sup> Prior to the 1999 elections the Malawi Electoral Commission created 17 new constituencies, nine in the south and eight in the central region. Stephen Brown, "Malawi: The Trouble with Democracy," *southern Africa Report Archive*, Vol. 15, No. 4 (October 2000): 19; Nandini Patel, Richard Tambulasi, Bright Molande and Andrew Mpesi, "Consolidating Democratic Governance in Southern Africa: Malawi," 36.

<sup>83</sup> Brown, "Malawi: The Trouble with Democracy," 19.

In January 2001, the legislature convened for a week and again dealt with several important constitutional amendments. Unlike those of the first session, most of these legislative amendments consolidated the power of the majority, and thus weakened democratic checks within the legislative branch itself. Constitution (Amendment) Act No.3 of 2001 reduced the required quorum to fifty percent plus one, and was passed by a vote of 146 to one, with forty-three abstentions.<sup>84</sup> During this time, both the MCP and AFORD were facing internal problems over leadership issues, which explained why some opposition legislators voted in support of the amendment. The UDF was now able to establish a quorum and pass bills unilaterally, raising concerns from civil society and religious groups about legislative independence from the executive.<sup>85</sup>

During the same January 2001 one-week sitting of parliament, section 65 of the Constitution, which prohibited elected MPs from changing party affiliations, was amended to extend the prohibition to allow the Speaker to declare a seat vacant if a member joined *any* association or organization whose objectives or activities were political in nature. Though the bill received wide condemnation from opposition parties and civil society, it eventually passed with the required two-thirds majority.<sup>86</sup>

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<sup>84</sup> Patel and Tostensen, "Parliamentary Executive Relations in Malawi 1994-2004," 10.

<sup>85</sup> Ibid.

<sup>86</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 10.

The rationale behind the opposition legislators' support of the amendment was that they felt it prevented the executive from enticing opposition legislators to join the government side, and hence prevented the creation of a single party and a return to dictatorship. Following the amendment, the application of the amended section 65 was resented also, as it appeared to be applied selectively against those that had fallen out with the ruling party in order to intimidate and prevent legislators from associating with groups and organizations opposed to the UDF. The specific object of this amendment seemed to be to prevent MPs from patronizing meetings of pressure groups and religious groups in opposition to Muluzi's emerging Third/Open Term bid.<sup>87</sup>

Parliament voted twice on a constitutional amendment to repeal section 68-72, effectively eliminating the Senate (which had yet to be appointed). The bill was defeated in 2000, but tabled again in 2001. The Senate was meant to ensure wider representation by having representatives from the district councils, chiefs, and interest groups (including women, the disabled, farmers, minorities, business sectors and trade unions). Its task was to receive, examine and modify bills from the National Assembly.<sup>88</sup> As the high court in Lilongwe was considering a request for an injunction from the Malawi Human Rights Commission and the Malawi Human Rights Resource Centre to

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<sup>87</sup> Nixon Khembo, "The Multiparty Promise Betrayed: The Failure of Neo-Liberalism in Malawi," *African Development*, Vol. XXIX, No. 2 (2004): 84.

<sup>88</sup> Nandini Patel, "The Representation Challenge in Malawi." 27.

prevent the bill being tabled (on the grounds that it was unconstitutional) parliament quickly tabled, debated and passed the abolition of the Senate bill.<sup>89</sup>

Constitution (Amendment) (No.3) Act 2001, clarified the majority required to pass a bill into an act of parliament, extended disqualification on grounds of fraud to local government elections as well as the president and MPs, and gave the National Assembly power to conduct investigations and subpoena any person to appear before it and its committees.<sup>90</sup> Additionally, it clarified that a serving ombudsman could be re-appointed, ensured that the Defence Forces of Malawi were constituted by or under the Constitution, prohibited employment of any part of the Defence Force outside Malawi for more than ninety days, except with parliament's authority, and established the Malawi Prisons Services.<sup>91</sup> The amendment was important because it ensured that the named institutions are enacted under an act of parliament, thereby bringing them under the control and direction, of the parliament, which is good for democracy.

In 2002, the Open Term Bill was introduced in parliament. It intended to remove the presidential term limit, allowing Muluzi to stand for re-election, which was a shift away from democratic rule. Although, an amendment to any section of the Constitution requires a majority vote of approval by the people of Malawi in a referendum,

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<sup>89</sup> Nandini Patel, "The Representation Challenge in Malawi." 27.

<sup>90</sup> Kamanga, "Amendments to the Constitution since 18<sup>th</sup> May 1994," 14-16.

<sup>91</sup> Ibid., 17-22.

parliament bypassed the vote and discussed the amendment of section 83 (term of president).<sup>92</sup> This development demonstrates the trouble the democratization process was going through in Malawi.

The idea to allow Muluzi stand again, contrary to the required constitutional two-term limit was propagated by his close cabinet ministers, including Dumbo Lemani and Lilian Patel, in liaison with the UDF regional governor for the south, Davis Kapito, who declared during public rallies that the UDF was full of *madeya* (maize husks) and only Muluzi could lead the party to victory. Although Muluzi kept silent, he was generally perceived to be the power behind the idea.<sup>93</sup>

On July 4, 2002, amid reports that some opposition MPs had been paid by Muluzi to support the bill, Khwauli Msiska (AFORD) moved it as a private member's bill to demonstrate opposition support. With ninety-five seats in the House, UDF needed thirty-three votes for the amendment to pass; however, the vote was three short of the required two-thirds majority for a constitutional amendment as twenty-nine opposition MPs and one independent voted for the amendment (125 to fifty-nine, with three abstentions).<sup>94</sup>

Attorney General and Minister of Justice Henry Phoya introduced the new Third Term Bill during an extraordinary

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<sup>92</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 11.

<sup>93</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 10.

<sup>94</sup> "President defeated in Malawi third term bid, *Afro News Online*, available at, [http://www.afrol.com/News2002/maw010\\_3term\\_defeat.htm...](http://www.afrol.com/News2002/maw010_3term_defeat.htm...), Accessed 9/23/2010.

two-day sitting in January 2003. While the Open Term Bill would have eliminated presidential term limits, the Third Term Bill called for an increase in the presidential term limits from two to three consecutive terms.<sup>95</sup> The legislature debated the bill extensively, but following disagreements on implementation, it was referred back to the Legal Affairs Committee for fine tuning. It never resurfaced after becoming apparent that it was not going to get the required two-third majority. The defeat of the Open Term Bill and the abandonment of the Third Term Bill saved the democratic regime.<sup>96</sup> The bills failed largely because of the presidential aspirations of key UDF legislators, and their supporters within parliament. Although driven by personal interest, the action nevertheless contributed to maintaining democracy by blocking further consolidation of executive power. Unfortunately, the defeat also set off a struggle for power within the UDF that, as the next chapter shows, fundamentally weakened the legislature.

Lastly in 2003, Standing Order 116 (1) was amended to make it a requirement to publish a bill and make copies for all members at least twenty-eight days between the tabling of bill and the debates.<sup>97</sup> Using the provisions as stated in Standing Order 117(1), this twenty-eight-day period is frequently waived. Justification for waivers has been attributed to postal delays, time constraints, urgency and

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<sup>95</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 10.

<sup>96</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 11.

<sup>97</sup> Malawi Parliament, *Standing Orders*, (Lilongwe: Parliament Press, 2003): 39.

consequences to the nation of not passing the motion, and include the time when the bill should be tabled.<sup>98</sup> Though the waiver is a good development, the way it has been used has resulted in MPs having little time to prepare themselves for debates, resulting in parliament passing bill without much scrutiny and debate.

In summary, this section demonstrates how parliamentary authority and democracy were undermined mainly during the period of 1999-2004. Though some amendments were good for democracy in that they strengthened parliament authority, the majority undermined it. As shown in the discussion, from 1999 to 2004, most of the bills passed strengthened the powers of the majority and weakened those of the minority. However, despite this challenge, personal aspirations helped contain the situation when parliament voted against changing the section that added term limits for the executive, demonstrating how important personal interests can be for the survival of democracy.

#### **D. CONCLUSION**

The historical analysis of the legislature in Malawi since the dawn of multiparty politics from 1994 to 2004 demonstrates that the legislature has been able to exercise its functions. In terms of oversight, parliament was able to reveal irregularities in government departments which resulted in some individuals being dropped from cabinet. Furthermore, MPs exercised oversight regarding the HIV/AIDS

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<sup>98</sup> Malawi Parliament, *Standing Orders*, 46; Patel and Tostensen, "Parliamentary-Executive Relations," 13.

problem to ensure that their constituents were cared for by the government. This raised their standing in the eyes of their constituents. Again, by providing for their constituencies in terms of health-care systems, schools, roads and social facilities, they ensured their own political survival. Therefore, performance of their functions was somewhat motivated by personal interest to gain political mileage. Despite skepticism, some bills, like section 64, and 65, were still passed with the required two-thirds majority, though the opposition initially objected.

This could be looked at in terms of political survival mainly for the parties with regard to section 65, as it was deemed necessary to prevent demise of parties through the legislators changing side once in the House. The period of 1994-9 was slightly better for democracy than the troubled period of 1999-2004 when challenges were posed to the democratization process. This is attributed to the desire by the incumbent to remain in power while the opposition was also trying to ensure its own political survival. During this struggle, the government side used a standoff on budget to win public sympathy and gained the support of NGOs, religious groups, mass media and the masses. This support helped to undermine democracy because it gave the executive an excuse to run government business without regard to legislature. This is bad for democracy since there are no checks and balance on executive. During this standoff the opposition was depicted as evil and anti-development by members of the media, further weakening their functions of checking the executive.<sup>99</sup>

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<sup>99</sup> "The opposition is behaving immorally," *The Daily Times* *Newspaper*, (July 25, 2007).

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### III. PARLIAMENT IN MALAWI (2004-2009)

The challenges to parliamentary authority, which began in the 1999-2004 period and continued to manifest in the period 2004-2009, greatly affected how parliament performed its core functions. The previous chapter demonstrated that parliament was able to rise above party politics to ensure that the democratic process was not derailed.

This chapter shows that most of the authority parliament had accumulated in the previous decade was undermined by the power struggle unleashed by the failure of Muluzi's third term bid. This affected parliament's performance of its main functions during the period of 2004-9 and ultimately enabled the executive to bypass and place the legislature in a subordinate position, a recipe for a return to autocratic rule. The subordinate position of parliament was dictated by section 59(1) of the Constitution, which gives the president power to determine the place and time of the sitting of parliament (or prorogue its sitting) in consultation with the Speaker. In the face of the power struggle, the president used this provision unilaterally to call parliament, and once government bills passed to prorogue it.<sup>100</sup>

Following the defeat of the Open/Third Term Bills, Muluzi handpicked Bingwa Mutharika to run as the UDF candidate in the May 2004 presidential election. Speaking

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<sup>100</sup> "Malawi Parliament Fails to Pass National Budget," *Issue Post*: "Malawi leader Suspends Parliament over budget row," *Mail&Guardian Online*, available at <http://www.mg.co.za/article/2008-06-20-malawi-leader-suspends-par>. Accessed 9/22/2010.

on state-controlled television, Muluzi said that since there was little time before elections would be held, it was important to tell the nation the way forward to ensure a successful election and a smooth transition. He announced that the UDF National Executive Committee had endorsed Mutharika's candidacy and asked him (Muluzi) to stay on as the party's national chairman.<sup>101</sup>

It was widely believed that Mutharika, a political unknown, would be Muluzi's puppet. Muluzi conducted most of the campaign, only allowing Mutharika to speak for a few minutes at a time.<sup>102</sup> Mutharika won the presidential elections with thirty-five percent of the popular vote, while John Tembo of MCP had twenty-seven percent, and Gwanda Chakuamba of Mgwirizano coalition (Republican Party, an MCP breakaway, and six other smaller parties, excluding National Democratic Alliance [NDA]) had twenty-six percent. The UDF won forty-nine seats in parliament, MCP sixty seats, Mgwirizano twenty-seven seats, independent legislators thirty-eight seats and other small parties (not in the coalition), fourteen seats.<sup>103</sup> Most of the independent legislators (twenty-eight) came from the southern UDF stronghold, and were in fact former UDF

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<sup>101</sup> Anderson Fumulani, "Politics-Malawi: Victory for Democracy As Muluzi Names Presidential Candidate," *Inter Press Service*, (April 2, 2003): 1-2.

<sup>102</sup> "Malawi Politics: Mr. Mutharika demonstrates unexpected independence," *EIU Views Wire*, (Oct 29, 2004).

<sup>103</sup> "Malawi President gain majority," *BBC News Online*, (June 18, 2004), available at <http://news.bbc.co.uk/2/hi/africa/3819553.stm>, Accessed 7/30/2010.

members who had worked against the third term bid and subsequently been defeated in party primary elections by candidates loyal to Muluzi.

Mutharika made it clear from his first day in office that he was no puppet. In his inauguration speech, he announced that he would not tolerate corruption in his government and that those who broke the law while he was in power would be brought to justice. The arrest of Humphrey Mvula immediately followed, which UDF Secretary General Kennedy Makwawala argued was like arresting the UDF itself.<sup>104</sup> Mutharika's cabinet appointments were delayed, but ultimately included no one close to Muluzi. This set him on a collision course with his predecessor and other UDF top leaders.<sup>105</sup>

Mutharika also faced a possible threat in parliament as the UDF again failed to win a majority. Within a few months, however, some non-UDF legislators had decided to support executive-sponsored legislation in exchange for personal benefits and ministerial positions. In June 2004, Gwanda Chakuamba accepted a ministerial position, delivering most Mgwirizano MPs to the UDF coalition.<sup>106</sup> Less than two weeks later, Brown Mpinganjira rejoined the UDF in a deal that delivered NDA legislators to the UDF (in contravention of section 65, which later brought

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<sup>104</sup> Raphael Tenthani, "Malawi President Rules His Way," *BBC News Online*, (Wednesday, September 1, 2004), available at <http://news.bbc.co.uk/2/hi/africa/3618948.stm> Accessed 9/21/2010.

<sup>105</sup> "Malawi Politics: Mr. Mutharika demonstrates unexpected Independence."

<sup>106</sup> "U-turn boost for Malawi leader," *BBC News Online*, (June 4, 2004).

repercussions). Most independent MPs then joined the UDF coalition in recognition that it was emerging as the governing majority. In total, over a hundred legislators backed the UDF, which thus gained majority control and was then able to pass legislation, including executive-sponsored bills.<sup>107</sup>

Mutharika's tough stand on corruption created many enemies both within parliament and in his own UDF party. These enemies became bent on frustrating his exercise of power.<sup>108</sup> Mutharika stopped attending UDF party meetings on the grounds that he was not being given the respect due to him as president. In February 2005, he surprised everyone by announcing on radio that he had resigned from the UDF and formed his own Democratic Progressive Party (DPP) because of irreconcilable differences with Muluzi (who remained UDF party Chairman).<sup>109</sup> Some UDF and opposition legislators joined Mutharika's party while others remained with the UDF, plunging parliament into disarray.

In June 2005, Speaker of Parliament Rodwell Munyenjembe collapsed as he attempted to maintain order during a debate on impeaching the president, and he later died. The UDF-initiated impeachment went ahead but

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<sup>107</sup> "Malawi president gains Majority," *BBC News Online*, (June 18, 2004).

<sup>108</sup> "Malawi president quits his party," *BBC News Online*, (February 5, 2005), available at, <http://news.bbc.co.uk/2/hi/africa/4239145.stm>, Accessed, 9/23/2010.

<sup>109</sup> Blessings Chinsinga, "Malawi's Democracy Project at a Crossroads," 8; "Malawi president quits his party," *BBC News Online*, (February 5, 2005).

ultimately failed.<sup>110</sup> Following the failure of the impeachment, led by the remnant UDF and MCP, non-DPP legislators in 2006 invoked Section 65 of the Constitution, and asked the Speaker to declare vacant the seats of those legislators who had joined the DPP.<sup>111</sup> During a Constitutional Review Conference in 2006, President Mutharika asked the Supreme Court to consider the constitutionality of section 65, arguing that it contradicted section 32 of the same constitution, which provides for freedom of association, and could not be abridged since it was entrenched in the Bill of Rights. The Supreme Court in 2007 ruled that section 65 was valid and the Speaker could declare vacant the seats of the legislators in question.<sup>112</sup> In June 2007, immediately following the court's ruling on section 65, the affected legislators obtained an *ex parte* injunction restraining Speaker Louis Chimango from implementing section 65.<sup>113</sup> This set in motion a series of legal battles, which severely limited legislative functions for the rest of the term.<sup>114</sup>

#### **A. PARLIAMENTARY EXERCISE OF EXECUTIVE OVERSIGHT**

The Public Appointments Committee, which can veto appointment of senior public officers without explanation, between 2005 and 2009 refused to confirm chief justice, auditor general, director of the Anti-Corruption Bureau and

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<sup>110</sup> "Drama during Malawi Impeachment," *BBC News Online*, (Friday, 24 June, 2005), Available at <http://newsbbc.co.uk/2/hi/Africa/4123850.stm> Accessed 8/30/2010.

<sup>111</sup> Dickson Kashoti, "41 MPs get stop order on Sec 65," *Daily Times*, (June 29, 2007).

<sup>112</sup> Chinsinga, "Malawi Democracy Project at a Crossroads." 12.

<sup>113</sup> Dickson Kashoti, "41 MPs get stop order on Sec 65."

<sup>114</sup> Chinsinga, "Malawi Democracy Project at a Crossroads," 12.

inspector general of Police appointees, although the nominees were clearly qualified.<sup>115</sup> Mutharika's appointee for inspector general of Police, Mary Nangwale, requested judicial review after her appointment was vetoed by Parliament on March 30, 2005. The court, however, upheld parliament's decision on the grounds that the courts did not have jurisdiction to review legislative appointment decisions.<sup>116</sup> As a result, these bodies could not function fully, so parliamentary oversight actions had a negative impact on the functioning of executive institutions.<sup>117</sup>

In other cases, parliament failed to act at all. The Committee on Agriculture and Natural Resources, which is mandated to monitor the distribution and use of agricultural inputs, failed to investigate a scandal involving the distribution of 2,000 fertilizer coupons to ministers and DPP legislators (to be distributed as patronage). After the DPP had summoned those involved, Dzoole Mwale, chairperson of the Parliamentary Committee on Agriculture and Natural Resources, announced that his committee would summon the same individuals on the same issue.<sup>118</sup> However, nothing more was ever reported on the investigation.

Finally, parliament refused to fund the state run MBC and Malawi Television (TVM) for the 2007/8 and 2008/9

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<sup>115</sup> Chinsinga, "Malawi Democracy Project at a Crossroads," 12.

<sup>116</sup> Marshal Chilenga, "Diskastocracy: Is it Undermining Democracy in Malawi?" in *Towards the Consolidation of Malawi's Democracy*, 51.

<sup>117</sup> Chinsinga, "Malawi Democracy Project at a Crossroads," 22.

<sup>118</sup> "Parliament summons, Minister for Defence, Khamisa over coupons saga," online available at <http://wellsforzoe.wordpress.com/2007/12/29/parliament-summons-minister-for-defence-khamisa-over-coupons-saga/> Accessed, 9/26/2010.

budget years, on the grounds that they functioned as propaganda tools of the executive, rather than providing Malawians objective and balanced news and information.<sup>119</sup> In response, the two institutions vowed to use other means available rather than depend on government funding alone (according to an act establishing MBC it is against the its establishment to engage in business activities at the expense of public programs).<sup>120</sup> The Media Council of Malawi (MCM) and Media Institute of Southern Africa Malawi Chapter (MISA Malawi) expressed their anger, arguing that the problems with MBC and TVM could best be dealt with by legislation that parliament refused to take up.<sup>121</sup> Other commentators argued that by denying the two broadcasters funding, parliament compromised its oversight function since it could no longer hold them accountable.<sup>122</sup>

Parliamentary oversight of itself was meanwhile undermined by executive intervention.<sup>123</sup> An inquiry by the

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<sup>119</sup> Lameck Masina, "Malawi Parliament Rejects Funding for Public Broadcaster." also see: Gregory Gondwe, "Malawi Parliament refuses MBC and TVM funding," *bizcommunity.com*, available at <http://www.biz-community.com/Article/415/66/27928.html>, Accessed 9/22/2010.

<sup>120</sup> Masina, "Malawi Parliament Rejects Funding for Public Broadcaster."

<sup>121</sup> Gregory Gondwe, "Malawi: Parliament refuses MBC and TVM Funding," *BIZCOMMUNITY.COM*, available at, <http://www.biz-community.com/Article/415/66/27928.html>, Accessed 9/22/2010

<sup>122</sup> Masina, "Malawi Parliament Rejects Funding for Public Broadcaster."; also by the same reporter, "Lack of Funding Thwarts Malawi's State Broadcasting Network," *VOANews.com*, (October 6, 2008), also see "Malawi Parliament in Row with parliament," *Journalism.co.za*, available: [http://journalism.co.za/index.php?option=com\\_content&Itemid=100009&catid=164&id=1313&view=article](http://journalism.co.za/index.php?option=com_content&Itemid=100009&catid=164&id=1313&view=article), Accessed 9/23/2010.

<sup>123</sup> "Editorial Comment: The Pardons that never were," *Nyasa Times online*, (June 3, 2010), available at <http://www.nyatasetimes.com/columns/editorial-comment-the-pardons-th>, Accessed 9/22/2010.

Parliamentary Service Commission found Clerk of Parliament Katopola guilty of flouting procurement procedures by awarding her company, Monik Trends, a tender to provide photocopying services to the National Assembly which earned her K85,000 (about \$600). As parliament prepared to remove her as the clerk, the president issued a pardon. The president's chief advisor, Dr. Hetherwick Ntaba claimed that Katopola could not be removed by parliament because she was appointed by the president.<sup>124</sup>

Starting in 2007, when the courts upheld constitutionality of section 65, non-DPP legislators refused to discuss any bills until section 65 was dealt with. In response, the president, using the powers vested in him by section 59(1)(b) of the Constitution, prorogued that sitting of the House.<sup>125</sup> This in turn made legislators even more uncompromising, and the president then warned that he could prorogue parliament permanently and run the government without it.<sup>126</sup> Following that threat, non-DPP legislators started to cooperate and get involved in the debate, hoping that once the budget was passed section 65 would be next. Immediately after the budget was passed, however, the president prorogued the sitting of parliament, thus giving it no time to exercise executive oversight function.

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<sup>124</sup> George Mkandawire, "Malawi Government challenges not to fire the country's clerk of parliament," available at <http://georgemkandawire.instablogs.com/entry/malawi-government-cha>. Accessed 9/22/2010.

<sup>125</sup> Maganizo Fly Mazeze, "Sanity Returns to Malawi parliament," *The Southern Times*, (September 22, 2010).

<sup>126</sup> Ibid.

## B. LEGISLATORS EXERCISE OF CONSTITUENCY SERVICE

Legislators generally performed better in constituency service than in the other core functions, though worse than in the previous decade. For instance, Getrude Mkandawire, a legislator in Mzimba-Solora constituency helped in securing food aid and fertilizer subsidy coupons for her constituents, thereby ensuring food sufficiency.<sup>127</sup> Legislators continued helping with the purchase of coffins, ferrying patients to hospitals, and attending church fundraising events, weddings and engagement ceremonies.<sup>128</sup> Legislators also remained in the forefront working with chiefs to mobilize the masses in developmental projects like molding bricks for the construction of schools, teachers' houses, and clinics.

Though some MPs performed constituency service, in other constituencies, especially in the south where most of the affected MPs came from, this became a problem. The problem was worse with self-help projects, especially in areas where the chiefs did not support the party of the MP. In such cases, chiefs refused to cooperate with legislators, seeking to undermine their support by depicting them as failures. The situation was the same in areas where counselors and

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<sup>127</sup> Frank Phiri, "Catching Up with Malawi's Female Legislators," *Mail & Guardian online*, (December 13, 2005).

<sup>128</sup> MacDonald Thom, "The Daily Times," (September 21, 2010).

legislators came from different parties.<sup>129</sup> Furthermore, MPs threatened with the loss of their seats under Section 65 spent much of their time in courts getting injunctions to prevent the Speaker from acting. Others, feared the loss of their seats, did not want to get very involved lest they labor in vain. This alienated the affected MPs from their constituents, adversely affecting the performance of constituency service. The rationale behind this was that MPs would only get involved in developmental projects when they would be able to consolidate their power bases.<sup>130</sup>

#### **C. HOW PARLIAMENT EXERCISED THE POWER TO LEGISLATE**

The political struggle over control of parliament also disrupted meaningful debate and consideration of bills. Most parliamentary disagreements in the 2007/8 and 2008/9 sittings arose out of the conduct of business. Opposition legislators complained that the leader of the House was changing the order of business in the House in disregard of what was being discussed in the Business Committee (which is mandated to produce conduct of business during parliamentary sittings). These disagreements resulted in deadlocks and adjournments, which limited the available

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<sup>129</sup> Personal observation. Constituency service in most constituencies in Mangochi, Zomba and Thyolo among others suffered. This was because the chiefs supported UDF and most of the legislators had ditched UDF to join DPP as such the chiefs felt cheated too and as payback they refused to co-operate with the MPs concerned. In Dowa West constituency where the MP was MCP and the counselor was DPP also faced the same problem especially with self-help projects. Though not true, the counselors would accuse the MP of forcing the masses to work for free for projects which were fully funded as a way of frustrating the MP. As a result of the accusations the masses started to shun self-help projects because they believed they had to be paid and not work for free.

<sup>130</sup> Chinsinga, "The Interface between Local Level Politics, Constitutionalism, and State Formation in Malawi through the Lens of the Constituency Development Fund (CDF)."

time to discuss important bills.<sup>131</sup> During the 2008/9 parliamentary sitting, the clerk of parliament referred the Malawi-Mozambique Electricity Interconnection Bill before it was passed in the House to the president for assent. The Speaker took personal responsibility, claiming it was because of some faults in the system. This development represented some form of executive appropriation of parliamentary power. According to section 73 of the constitution (Presidential Assent), once bills have been discussed and passed by the required vote, the Clerk of Parliament compiles and sends the bills to the president who must assent within 21 days. If he does not assent, the bill goes back to the House and it passes through the same process until an assent is reached. The illegal assent was rescinded following media revelations of the irregularity.

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The non-DPP majority MPs were not even prepared to pass legislation offered by their own party members. During the 2008 sitting of parliament a UDF member of the Committee on Media proposed a private motion to amend the MBC act, placing the state-owned MBC and TVM under an independent body to guarantee some coverage of the opposition. Opposition legislators, including those who had complained of lack of coverage during previous campaigns, voted the bill down, amidst shouts of "*kodi umangolota zokhala ku opposition eti*," (so you do not dream of ever being in the government at some

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<sup>131</sup> "Why is the opposition failing to read the writing on the wall?" *The Daily Times*, (July 18, 2007).

<sup>132</sup> Chinsinga, "Malawi Democracy Project at a Crossroads." 13.

point).<sup>133</sup> The implication for the opposition MPs was that changing the Act would not serve their interests once they were in power and thus in position to use the two institutions as they saw fit. During 2007/8 and 2008/9 parliament sittings, MPs also refused to bow to public pressure to repeal the Witchcraft Act, which makes it a crime for one to claim practicing witchcraft or call another person a witch.<sup>134</sup>

Tembo's majority coalition refused to participate in any debate during the sitting of parliament dedicated to passing the budget, until section 65 was dealt with.<sup>135</sup> Popular dissatisfaction with the refusal to pass the budget led to demonstrations all over the country, and especially at the parliament building. In some cases the demonstrations turned violent. In August 2007, demonstrators hurled stones at parliament building and passing cars belonging to the legislators and prevented the MPs from leaving the building in an effort to force them pass the budget.<sup>136</sup> *The Daily Times* spoke for the people at large, and in an edition on July 18, 2007, expressed dismay by stating it was hopelessly disappointing that the opposition legislators were failing to

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<sup>133</sup> Live Parliamentary Debates broadcasts on the state controlled MBC.

<sup>134</sup> Section 4 of the Witchcraft Act: Section 6 of the Witchcraft Act. Through consultation by law review experts in different part of the country, the electorate wanted the legislature to pass a bill criminalizing witchcraft itself so that those people teaching witchcraft to children could be brought to justice. "Mulanje supports amendment of witchcraft act," *Nyasa Times online*, available at <http://www.nyasatimes.com/national/mulanje-supports-amendment-of-witchcraft-act.html>, Accessed 9/22/2010.

<sup>135</sup> Mazeze, "Sanity Returns to Malawi parliament."

<sup>136</sup> "Malawi Parliament ban overturned," *BBC News Online*, (August 8, 2007).

pay attention to the pleas and wishes of the masses, chiefs, leaders of NGOs, students, clergy, and lawyers who wanted the MPs to debate the budget first. The paper argued that it was disappointing, because MPs were instead behaving as master and not servants of the people.<sup>137</sup> Nevertheless, during the 2008/9 budget sitting the opposition MPs still maintained their position and only passed the budget (in August) after the president threatened to close parliament. Once the budget was passed, the president adjourned the sitting before section 65 could be dealt with.<sup>138</sup>

#### **D. CONCLUSION**

This chapter demonstrates how the struggle for control of parliament by parties in the House greatly impeded any meaningful discussions. In the face of the power struggle, parliament and its committees struggled to exercise the core functions in the period 2004-9. This was complicated by the uncompromising stance of non-DPP legislators, resulting in the president invoking section 59(1) to prorogue it. By constantly invoking section 59(1) between 2007 and 2008, parliament could hardly exercise its authority.

As result of this subordinate position relative to executive, parliament authority was greatly undermined and in the face of lack of proper checks of and balances, the

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<sup>137</sup> "Why is the Opposition Failing to read the writing on the Wall," *The Daily Times*, (July 18, 2007): "Malawi: Political bickering takes priority over poverty," *WOW.Gm*, available at <http://wow.gm/africa/malawi/lilongwe/article/2007/7/6/malawi-politi...> Accessed 9/22/2010: Mike Chipalasa, "Civil Society petitions Chimango," *Daily Times*, (July 24, 2007).

<sup>138</sup> "Malawi Parliament Fails to Pass National Budget."

democratization process stagnated. Power struggles within parliament and its subordinate position help to explain why after fifteen years since Malawi attained multiparty politics, Malawi is still in the middle on the authoritarian-democracy chart. This observation greatly supports Barkan's argument about legislature: weak ones cannot effectively perform their oversight duties, while strong ones positively contribute to the democratization process by acting as an effective check and balance on the executive.<sup>139</sup>

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<sup>139</sup> Joel D Barkan, "African Legislatures and the "Third Wave" of Democratization," *Preliminary Draft*, prepared for Yale/World Bank Workshop on Governance and Development in Africa and the Middle East to be held at Yale University, January 30-31, 2009 (12/30/2008): 3.

#### **IV. CONCLUSION AND RECOMMENDATIONS**

The above analysis demonstrates that although parliament faced some challenges in its first period (1994-1999) it was able to conduct business. This can be attributed to the fact that during this period there were no serious issues to the political survival of the legislators.

The challenges that were there, such as the lack of a majority in the House, were settled by entering into a coalition and changing the constitution to accommodate the change. Challenges to party survival as a result of legislator defections were solved under section 65. Since these changes did not seriously affect the balance of power between parties or the survival of individual legislators, parliament managed to conduct its business without the serious challenges that faced the succeeding parliament.

During the second term (1999-2004), parliament came under real challenges which affected its functions and moved it away from the path it had started during the first term. Though legislators managed to perform constituency service, legislation, and executive oversight, these were overshadowed by the way parliament used constitutional amendments to weaken checks on the power of the legislative majority. Though these amendments were made legally, they had a negative impact on democracy. Political survival proved instrumental in the failure to pass the Open/Third

Term Bills.<sup>140</sup> Mpinganjira and others saw Muluzi's ambition to extend his mandate as a threat to their own political ambitions, and hence worked to block passage of the amendment, serving the interests of democracy indirectly.

In the subsequent parliamentary sittings (2004-9), the power struggle in the House and the need for survival of the DPP in parliament and those MPs who had moved to DPP effectively immobilized parliament.

Since the beginning of multipartyism, the parliament in Malawi has been faced with problems that have affected its main functions and help to explain why Malawi is still in the middle on the democratic-authoritarian spectrum. Although section 89(3) and (4) of the Constitution give the legislature oversight function over the executive, parliament always played a subordinate role.<sup>141</sup>

The subordinate position of parliament is dictated by section 59(1) of the Constitution, which allows the president in consultation with the speaker to determine the place and time of sitting and also bestows the power to prorogue parliament. Additionally, by requiring the president to call parliament in consultation with the speaker, it has compromised the independence of parliament. This means the president can decide to delay the sitting of parliament if he deems that the bills proposed for discussion are not in his best interest. The set-back with this is that parliamentary meetings have been placed at the

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<sup>140</sup> Patel and Tostensen, "Parliamentary-Executive Relations in Malawi 1994-2004," 10.

<sup>141</sup> Government of Malawi, *The Constitution of the Republic of Malawi*, (Zomba: Malawi, 2002) 41.

mercy of the executive, and as shown, have compromises its functions in the face of power struggle. It is therefore, important for parliament to take steps toward remedying this anomaly by amending section 59(1) of the Constitution to ensure it retains the power to hold the executive accountable. Until the amendment is made, parliament will continue to be subordinated to the executive and this will negatively impact on parliament's ability to exercise its functions.

Furthermore, though parliament has been given the power to hold the executive accountable, it still lacks the necessary enforcement mechanisms. Enforceability signifies the capacity of parliament to reprimand or impose sanctions on public office holders who go against their duties. The ability to enforce its decisions enables parliament to avoid an abuse of power or the neglect of duties while enabling corrective measures. Unfortunately for the parliament in Malawi, it lacks this feature to penalize representatives of the executive for failing to perform their duties. This was clearly demonstrated in the Field York case where, despite the revelations parliament could do nothing more for lack of an enforcement mechanism.<sup>142</sup>

Another factor affecting the functioning of parliament is the lack of meeting time. In order for parliament to be objective and effective it needs ample meeting time so that members can study bills, conduct research, seek professional advice on policy issues and consult their constituencies. Only when parliamentarians are well-

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<sup>142</sup> Patel and Tostensen, "Parliamentary-Executive Relations," 3.

informed will they be able to offer any tangible advice and properly hold the executive accountable. Unfortunately for Malawi, parliamentary sessions have not been long enough to provide the members with the opportunity to do research, study the bills and consult. As a result, debates in the House since the beginning of multiparty politics have been done in a manner that makes it difficult to have informed debates resulting in bills being passed without meaningful contributions from the MPs. Despite the Constitution stipulating that parliament should meet at least twice a year, there has not been enough time since it only meets for seventy-five to one hundred days a year.

Worse yet, in the face of the power struggle, parliament met only to discuss the budget and other government-sponsored bills. In some cases MPs opposing Mutharika refused to contribute anything toward the debate and allowed those on the government side to proceed with business. Sadly for democracy, once the bills were passed, the executive rushed to prorogue parliament indefinitely. Parliament needs time to scrutinize bills, conduct research and consult with constituencies and experts in order to have informed debates. That being the case, postal delays, time constraints and urgency of the bills should not be used as excuses to waive the twenty-eight-day requirement, as doing so negatively affects the democratization process. What is required is that the clerk should plan well ahead and ensure that all bills have been given ample study time before conducting debates.

Committees are an important part of parliament because over time they gain specialty in certain policy fields and

members gains considerable expertise, which is vital in questioning and countering bills and motions emanating from the executive. Consequently, the level of the expertise of committees determines the degree of influence on policy making.<sup>143</sup>

In Malawi Parliament, the committee members serve in their respective committees for a period of a year before being moved to another committee. This implies that the MPs rarely gain the necessary expertise to objectively challenge executive-sponsored bills and motions. Since members are always moving from one committee to another, knowledge gained in one committee becomes useless since it cannot be used in a different committee.<sup>144</sup> This creates a lack of continuity affecting the overall functioning of the various committees, as members are always on the move and cannot see the programs they start through to the finish.

Members are also not always assigned to committees based on merits, capacity or interest, as personal favoritism tends to play a role in the assignments.<sup>145</sup> By having members who are not committed to or do not know their tasks, the committees are rendered ineffective from the beginning. Therefore, in order to have capable committees, party leaders should ensure that the MPs assigned to different committees have the interest and knowledge.

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<sup>143</sup> Patel and Tostensen, "Parliamentary-Executive Relations," 4-5.

<sup>144</sup> My personal experience interacting with members of the parliamentary committee on defence.

<sup>145</sup> Patel and Tostensen, "Parliamentary-Executive Relations," 14.

With regard to term limits for committee members, it is important for parliament to change the standing orders to enable the members to stay longer, so that the knowledge gained is not wasted, as is the case now. Furthermore, staying longer in one committee will enable members to see the projects through and find remedies where necessary.

Lack of resources is another problem challenging the committees exercising the oversight function. Only few committees do have funding and in most cases with the support of donor community.<sup>146</sup> For those committees that are dormant, the onus is on the chairs to be proactive and revive them. It is only when the committees are active, that donors may be more willing to come forward with assistance to support their respective programs. Furthermore, parliament must make efforts to ensure that the treasury does not cut budgets for committees as they are vital for an effective and efficient parliament.

Using its powers to veto appointments of individuals without giving reasons, the committee has at times misused this power by vetoing appointments on political grounds, affecting the functioning of certain governmental departments and impacting accountability. It is important for the opposition to realize that being the opposition does not mean opposing everything government does, but rather giving it guidance, since the opposition is also

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<sup>146</sup> Patel and Tostensen, "Parliamentary-Executive Relations," 14.

part of the government. Although the power to veto is good for democracy, it must not be done to the level where it renders some governmental departments unaccountable due to lack of confirmed officials to take responsibility.

MPs need to realize that the society at large has placed a responsibility on them to check on executive power, represent them, provide constituency service and legislate. Such being the case they need to perform these functions with some objectivity or risk the wrath of the electorates. This was demonstrated in the 2009 elections when almost seventy-five percent of MPs failed were unsuccessful in maintaining their seats for failing to perform their functions.

This discussion has demonstrated how the need for political survival determines the functioning of parliament and explains why MPs will sometimes behave in a particular way. Where the need for political survival seems not to exceedingly threaten one's political career, parliamentarians will behave differently and support it, but when it greatly affects their political careers they will stand against it.

The case in question is how parliamentarians handled section 65 and the Open/Third Term. In the former, almost no members perceived section 65 as a threat to their political careers on the face value, and hence most of them supported it despite receiving some condemnation from civil society organizations. Furthermore, it was supported because it was deemed to support democracy by preventing elected legislators from changing parties once inside the

House and help to preserve the existing parties. Conversely, the Open/Third Term Bill was not supported by all because it threatened the political careers of some individuals who felt Muluzi's efforts to stand beyond the constitutional term limits negatively affected their political careers. This accounts for the opposition that Open/Third Term Bill received. The case was no different with section 65 during 2004-9, when forty-one MPs got injunctions preventing the Speaker from declaring their seats vacant. Unlike 1999-2004, in 2004-9 application of section 65 affected the survival of individual MPs, and faced with the uncertainty of retaining those seats in case of a rerun, they were ready to fight. From this it can be argued that when MPs perceive some actions as a threat to their political survival, they will resist and fight against it. When the actions pose no threat, they may support them even if they do wholly support the actions/bills in question.

Considering that parliament is part of the decision-making process, legislators must as much as possible try to be restrained and objective during debates to avoid unnecessary deadlocks as has been the case between 2004 and 2009. It is only when parliament is fully exercising its main functions that democracy can be assumed to have matured.

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